

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 90-588-G - ORDER NO. 95-1717  
DECEMBER 12, 1995

IN RE: Application of South Carolina Pipeline Corporation - Maximum Rates for Industrial Customers.	) ORDER ) MAINTAINING ) PRESENT LEVEL ) OF CAPS AND ) REQUIRING ) DEVELOPMENT OF ) MONITORING ) PROCESS
---	--

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (the Commission) on this Commission -- initiated docket to review the level of maximum markups, or price caps for the industrial customers of South Carolina Pipeline Corporation (SCPC, Pipeline, or the Company). A procedural history is in order to convey the scope and breadth of this matter, and to lay the groundwork for the Commission's decision.

In 1990, in a proceeding to approve a reduction in natural gas rates for Pipeline's sale-for-resale customers, Nucor Steel and the South Carolina Energy Users Committee (SCEUC) challenged the value-of-service methodology used in setting industrial rates. The Commission rejected arguments that cost-of-service or rate-of-return methodology must be used and reaffirmed its long-standing policy of allowing negotiated rates with industrial customers subject to the caps, but found that a new hearing should

be scheduled, and further evidence considered, concerning the appropriate level of caps. The present docket was opened to consider this new evidence. Because it rejected the use of a cost-of-service methodology for industrial rates, the Commission specifically ruled that it would not consider evidence on the issues of rate of return or cost of service. Order No. 90-729, Docket No. 90-204-G, dated August 8, 1990, at 23-33,40.

Thereafter, Nucor and SCEUC petitioned for rehearing or reconsideration of the Commission's decision. Additionally, SCEUC moved to stay the hearing on the industrial price caps pending judicial review of the Commission's orders. The Commission denied rehearing or reconsideration, but granted SCEUC's motion for a stay. Order No. 90-1010, dated October 17, 1990, at 1,4.

Nucor and SCEUC then filed petitions for judicial review in the Circuit Court, which resulted in separate orders reversing the Commission's orders. On appeal, however, the Supreme Court of South Carolina reversed both Circuit Court orders and reinstated the orders of this Commission. Nucor Steel v. South Carolina Publ. Serv. Comm'n. \_\_\_\_ S.C. \_\_\_\_, 439 S.E.2d 270 (1994).

The Commission thereafter lifted the stay in this docket and directed the Commission Staff to set the matter for a hearing. Order No. 94-478, dated May 19, 1994. SCEUC then filed a petition and motion with the Commission which, among other things, asked that Staff rate case audits for 1988 be updated and sought a determination that there were no preconditions on the evidence that might be presented at the hearing. SCEUC Petition and Motion, dated July 13, 1994. Pipeline opposed these requests, contending

that the updated audits were improper because the Commission had established preconditions in its earlier orders precluding presentation of cost-of-service or rate-of-return evidence.

Pipeline Response to Petition and Motion, dated August 8, 1994; Amended Response to Petition and Motion, dated November 1, 1994.

On November 2, 1994, the Commission heard oral arguments on SCEUC's petition and motion. It subsequently issued an order partly granting and partly denying the relief requested by SCEUC. Significantly, the order reaffirmed the Commission's previous ruling that evidence on the issues of rate of return and cost of service would not be considered in this proceeding. Order No. 94-1244, dated December 7, 1994, at 5-6. The Commission adhered to this ruling in denying SCEUC's request to reconsider. Order No. 95-78, dated January 19, 1995, at 3-4.

During the interim, Pipeline moved for a continuance of the hearing scheduled for January 10, 1995. The grounds for this motion were: (1) that the precise scope of the issues would not be known until the Commission issued its order ruling on SCEUC's petition and motion, leaving insufficient time to adequately prepare for the hearing; and (2) that Pipeline expected to be involved in a month-long hearing before the Federal Energy Regulatory Commission (FERC) beginning on January 10, 1995. Pipeline Motion for Continuance, dated November 28, 1994. The Commission granted the motion and rescheduled the hearing for May 22, 1995.

On February 24, 1995, SCEUC filed a petition for certiorari in the original jurisdiction of the South Carolina Supreme Court,

seeking interlocutory review of the Commission's Orders. The Supreme Court denied SCEUC's petition on May 5, 1995, and denied a petition to reconsider that denial on May 31, 1995.

The Commission thereafter rescheduled the hearing in this matter to begin on October 3, 1995, and established deadlines for prefiling testimony and exhibits. Order No. 95-1092, dated May 17, 1995. After Pipeline had filed its direct testimony and exhibits, SCEUC filed a motion for rate sanctions. This motion alleged that Pipeline's prefiled testimony, to the effect that the maximum markups for industrial customers should be increased, violated certain statutes and Commission regulations. SCEUC Customers' Motions for Rate Sanctions, dated August 30, 1995. Pipeline filed a return opposing the motion and asserting that the rescheduled hearing and the time for prefiling of evidence should not be delayed. Pipeline Return to Motion for Rate Sanctions, dated September 1, 1995.

After hearing oral arguments, the Commission issued its Order denying SCEUC's motion for rate sanctions, but granting an extension of time in which to prefile its testimony and exhibits.

In the meantime, the Commission Staff prefiled the testimony of its witness, Richard L. Smith. On September 18, 1995, Pipeline filed a motion to strike the portions of Mr. Smith's testimony which stated that the Commission might consider using rate of return to monitor the existing price cap mechanism. Pipeline contended that this testimony was inconsistent with the Commission's prior rulings prohibiting the consideration of evidence on rate of return or cost of service. Pipeline Motion to

Strike, dated September 18, 1995. In its return, the Commission Staff denied that the testimony constituted evidence on rate of return or cost of service. Staff Return to the Motion to Strike, dated September 20, 1995.

On September 22, 1995, SCEUC filed its testimony and exhibits together with a motion to refile evidence. The motion sought to incorporate into the record of this proceeding evidence from the 1990 hearing in the sale-for-resale docket. SCEUC Motion to Refile Evidence, dated September 22, 1995. Pipeline opposed the motion to refile evidence on grounds that it constituted inadmissible hearsay and that it was irrelevant because it related to cost of service and rate of return. Pipeline Opposition to Motion to Refile Evidence, dated October 2, 1995. Pipeline also moved to strike certain portions of the SCEUC witnesses' testimony relating to rate of return or cost of service. Pipeline Motion to Strike, dated September 29, 1995.

On September 26, 1995, SCEUC moved the Commission for an order compelling Pipeline to answer discovery requests which had been objected to on the ground that they sought information on rate of return and cost of service and therefore exceeded the scope of permissible discovery. SCEUC Motion for Order Compelling Discovery, dated September 26, 1995. Pipeline opposed the motion, citing the prior Commission orders defining the scope of the issues to be considered in this matter. Pipeline Return to Motion for Order Compelling Discovery, dated October 2, 1995.

On September 27, 1995, the Commission issued its Order denying Pipeline's motion to strike portions of Staff witness Smith's

testimony. The Order held that the mere recommendation that the Commission consider using rate of return as a possible means of monitoring existing price cap mechanisms was not rate-of-return testimony prohibited by the prior Commission orders. Order No. 95-1562, dated September 27, 1995.

At the beginning of the evidentiary hearing which commenced on October 3, 1995, the Commission heard oral arguments on SCEUC's motion to refile evidence and motion to compel and on Pipeline's motion to strike portions of SCEUC's prefiled testimony and exhibits. The Commission then issued an oral ruling on the motions, as follows: (1) that language in its prior order did not contemplate an increase in the caps in this proceeding; (2) that SCEUC's motion to compel discovery was denied; (3) that SCEUC's motion to refile evidence was denied; and (4) that Pipeline's motion to strike was granted as to SCEUC witness Gorman's testimony, but denied with respect to the other witnesses testimony. SCEUC later made an offer of proof regarding the evidence that was disallowed, and Pipeline proffered evidence in rebuttal.

The evidentiary hearing was held on this matter on October 3-5, 1995. The Applicant, South Carolina Pipeline Corporation was represented by Mitchell Willoughby, Esq. and Sarena Burch, Esq. SCPC presented the testimony of Lawrence M. Gressette, Jr. and the direct and rebuttal testimony of Max Earwood, Francis J. Cronin, and Julius A. Wright. The Company also proffered as an offer of proof the testimony of George A. Schreiber, Jr. The Intervenor Lancaster, York, and Chester Natural Gas Authorities were

represented by Emil W. Wald, Esq.; the Consumer Advocate for the State of South Carolina was represented by Elliott F. Elam, Jr., Esq.; Nucor Steel by Garrett A. Stone, Esq., Russell B. Shetterly, Esq. and Michael Daniel, Esq.; the City of Orangeburg by James M. Brailsford, Esq.; South Carolina Electric and Gas Company by Francis P. Mood, Esq. and Henry White, Esq., and the South Carolina Energy Users Committee by Arthur G. Fusco, Esq. and Dan Lott, Esq. SCEUC presented the live testimony of Nicholas Phillips, Jr. and Alan Chalfant. The testimony of customer Steven A. Huhman was stipulated into the record by agreement. The testimony of Steven Gorman was proffered as an offer of proof. The Commission Staff was represented by F. David Butler, Esq. and Florence P. Belser, Esq. The Staff presented the testimony of Richard L. Smith.

The Intervenor Greer Commission of Public Works, Fort Hill Natural Gas Authority, and Heath Petra Resources, Inc. were not present at the hearing, nor represented by counsel.

During the hearing, Pipeline presented extensive evidence through the company witnesses about Pipeline's history, operations, and regulation by this Commission. It also presented expert testimony and an empirical study confirming the extent of competitiveness of the industrial fuels market in which Pipeline competes, supporting the appropriateness of continuing negotiated contracts with industrial customers, and addressing the reasonableness of the current level of maximum markups allowed in those contracts. SCEUC objected to the introduction of the study on the ground that it was prepared after the Commission granted a

continuance in the case and that it was in part based upon information obtained from sources other than the experts themselves. The Commission announced that it would rule on this objection in its final order.

SCEUC presented live testimony of two witnesses and the parties stipulated into the record the testimony of a third. SCEUC also made a proffer of evidence from the sale-for-resale docket that was excluded and of the cost of capital testimony of witness Gorman that was stricken. Reserving its objection to this evidence, Pipeline requested that the offer of proof be broadened to include the entire record from the sale-for-resale case. The Commission granted this request. The Commission also granted Pipeline's request that, while reserving its objection, it be permitted to make an offer of proof of witness Schreiber's rebuttal testimony in response to witness Gorman's.

## II. DISCUSSION

### A. MOTIONS

Two motions and/or objections were left unresolved at the end of the evidentiary hearing, and an additional motion was made by SCEUC subsequent to the hearing. We shall proceed to rule on these motions prior to deciding the merits of this case.

First, SCEUC attempted to move into the record various pages of the 1988 to 1993 FERC Form 2's of Atlanta Gas Light. Pipeline objected to the admission of these documents on various grounds, but stated that should the Commission find these documents were admissible, that the complete FERC Form 2's should be admitted, SCEUC consented to this suggested modification. We hold that the

documents are relevant and that the entire FERC Form 2's are hereby entered into the evidence of this case. Pipeline's objection is otherwise overruled.

Second, SCEUC objected to the admission of a study performed by Drs. Cronin and Wright. Among other reasons, SCEUC argues that the conclusions of the study are not supported by underlying facts in the evidence, and that the study does not constitute a reliable rate cap analysis. Pipeline cites Rule 703 of the South Carolina Rules of Evidence, and notes that an expert may express opinions based on facts or data that is not even admissible into the evidence of a case. We have considered this matter and agree with Pipeline's citation of the evidentiary rule, and its application to this case. Also, SCEUC's objection as a whole goes more towards the weight than the admissibility of the study. SCEUC also objects on the basis that the study in question was prepared after the Commission granted a continuance in this matter. We do not see the relevance of this portion of SCEUC's objection. The study in question is therefore hereby admitted into the evidence and the objection of SCEUC is overruled.

Subsequent to the hearing, SCEUC filed a supplemental motion to strike evidence, moving that the testimony of Pipeline witnesses Cronin and Wright be stricken on the grounds that their testimony contained various incorrect quotes, factual errors, and other difficulties. Pipeline filed a return to the motion, alleging that the motion constitutes late filed surrebuttal and attempted cross-examination after the fact. We agree with Pipeline, and deny the motion accordingly.

B. MERITS OF THE CASE

Now that we have ruled on the various motions and/or objections outstanding in this case, we will proceed to rule on the merits.

Although SCPC continues to argue through its brief that the Cronin-Wright study actually supports an increase in the levels of the caps in question, we again hold that our Order No. 90-729 at 40 did not contemplate an increase in the maximum rate levels, but only a determination as to whether or not the existing rate caps exceed a reasonable amount. Should Pipeline desire an increase in the caps, it can file for a rate increase pursuant to S.C. Code Ann. Section §58-5-240 (Supp. 1994). To the extent that this conflicts with prior Commission Orders, such Orders are hereby overruled. However, we have examined the study, and agree with Staff witness Smith's testimony, and would state that even if we examined the study for the purposes of determining whether or not it supported an increase in the caps, we hold that it does not support such an increase in any event. We agree with Staff witness Smith that the study does not relate its use of a negative productivity factor to the efficiency of Pipeline. Further, the negative factor has no adequate support in the study, and we do not believe this factor can be included in the calculations of the proposed margins. Also, the Commission has concluded that there was a remote correlation between the two companies which were included in the study and SCPC. Further, no criteria were shown as to how these Companies were chosen. The Commission is of the opinion that the very small sample size is an impediment to the

overall effectiveness of the study. It must also be noted that Exhibit 2-7, on page 22 of the report, shows a comparison of the volumes of natural gas sold by Pipeline at full margin on an annual basis relative to the level of margin actually achieved. These figures indicate that for the years 1989 through 1994, the percent sold below full margin averaged 88% and, in the most recent year, 1994, that 92% of volumes were sold below full margin. This indicates how infrequently the maximum mark-up is achieved and does not support any increase in the existing cap levels. Therefore, an increase in the margins is not supported by the evidence.

From their inception, Pipeline and its predecessor have been authorized by this Commission to contract with industrial customers directly for the sale of natural gas. In 1982, the Commission established maximum markups on the industrial contracts based upon the customer's end use or curtailment priority. The levels of these maximum markups have remained unchanged for the past thirteen years.

In reviewing maximum markups for Pipeline's direct industrial sales, the Commission is mindful that the current levels were approved by Commission Order No. 82-898 dated December 20, 1982. It is well settled that the Orders of this Commission are presumed to be valid, correct, and reasonable. Hamm v. South Carolina Public Service Commission, 309 S.C. 295, 422 S.E. 2d 118, (1992); South Carolina Cable Television Association v. Southern Bell Telephone and Telegraph Company, 308 S.C. 216, 417 S.C. 2d 586 (1992). Thus the existing price cap levels are presumed to be valid and reasonable. The burden is on the party seeking to modify

those levels to prove that such a modification is warranted. We do not believe that the evidence before us supports any change in the maximum markups at this time.

The study presented by Drs. Cronin and Wright is helpful in ascertaining the fact that competition exists in the gas market. However, it should be noted, as pointed out by South Carolina Energy User Committee witnesses and cross-examination by SCEUC's attorney, as well the testimony of the Commission Staff, that the study is fraught with difficulties. The study has applied an overly broad definition in determining market share calculations. According to Commission Staff witness Smith, it is highly probable that the industrial fuel consumption measured in the study includes some quantity of fuel for industries that do not have alternate fuel capabilities for the availability of natural gas and should not be used in the calculations. This would result in the calculated market share estimate of 15% being understated as to the market for Pipeline services considered under the docket. Second, the study failed to incorporate customer-specific data, which could have provided the Commission with useful information concerning the impacts of existing price mechanisms. Staff stated that it understood that certain customer data might be difficult to obtain, but information could have been organized and presented in some manner so as to avoid the problem in making public customer-specific proprietary information. The study as presented, however, does give an overall, or aggregate view. The study does propose that the level of maximum caps should be increased above the presently approved caps. As stated before, however, the

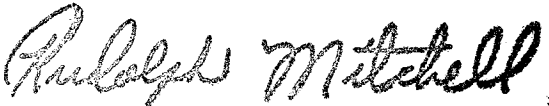
Commission does not believe that its original intent was to look at possible increases in the caps, and, even so, we do not believe that the study supports this conclusion in any event.

Despite these and other difficulties, as pointed out by various intervenors and Commission Staff witnesses, we do not think that the concerns are so important as to warrant a complete rejection of the study. We do believe that the study shows evidence of competition. We believe that the caps do appear to be constraining the industrial customers on an aggregate basis. We believe, as does Commission Staff witness Smith, that the cap mechanism appears to be working. We do believe that the cap levels can be maintained at the present level, but should be monitored as to their impacts and outcomes. (We note that no real evidence was presented which would dictate a reduction in the level of the caps.) We believe, as does Commission Staff witness Smith, that it is important the the Commission be able to monitor the outcomes of the caps in the future in some manner to evaluate their appropriateness. We think Pipeline should provide information to the Commission on a periodic basis to demonstrate the impacts of the caps on its industrial customers.

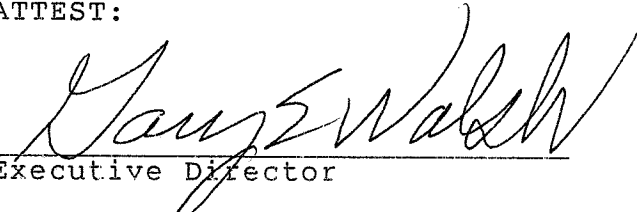
The Commission Staff has proposed a number of parameters to monitor, as has South Carolina Pipeline Corporation. We hereby hold that Staff shall develop a monitoring process along the lines of the parameters stated in its brief and testimony and with the elements, where possible contained in Pipeline's brief. Once the monitoring process has been developed, Staff shall serve the plan on the parties to the case for comments and bring a final

monitoring plan back to the Commission for approval. We believe that by adopting such a process, the Commission will be able to evaluate whether competition is continuing to work in the gas market in South Carolina. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Deputy Executive Director  
(SEAL)